

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

S

4

SENATE BILL 616
Finance Committee Substitute Adopted 5/9/17
House Committee Substitute Favorable 6/6/18
House Committee Substitute #2 Favorable 6/11/18

Short Title: Heroin & Opioid Prevention & Enforcement Act.

(Public)

Sponsors:

Referred to:

April 5, 2017

A BILL TO BE ENTITLED

AN ACT AMENDING LAWS PERTAINING TO THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT AND THE NORTH CAROLINA CONTROLLED SUBSTANCES REPORTING SYSTEM ACT, INCLUDING THE REVISION AND ESTABLISHMENT OF PENALTIES FOR CERTAIN VIOLATIONS, AND EXPRESSING THE INTENT TO APPROPRIATE ADDITIONAL FUNDS IN THE FUTURE FOR COMMUNITY-BASED SUBSTANCE USE DISORDER TREATMENT AND RECOVERY SERVICES, THE PURCHASE OF OVERDOSE MEDICATIONS, OPERATION MEDICINE DROP, AND A SPECIAL AGENT POSITION WITHIN THE STATE BUREAU OF INVESTIGATION.

The General Assembly of North Carolina enacts:

PART I. TITLE

SECTION 1. This act shall be known and may be cited as "The Heroin and Opioid Prevention and Enforcement (HOPE) Act of 2018."

PART II. AMENDMENTS TO THE NORTH CAROLINA CONTROLLED SUBSTANCES ACT

SECTION 2. G.S. 90-89(3)ee. reads as rewritten:

"ee.

~~5-Methoxy-n-diisopropyltryptamine.~~ 5-Methoxy-N,N-diisopropyltryptamine."

SECTION 3. For each NBOMe compound listed in G.S. 90-89(6)a. through l., the Revisor of Statutes is authorized to replace the hyphen that appears after "NBOMe" and before "2" with a space.

SECTION 4. G.S. 90-90(2) is amended by adding a new sub-subdivision to read:

"h1. Fentanyl immediate precursor chemical, 4-anilino-N-phenethyl-4-piperidine (ANPP)."

SECTION 5. G.S. 90-95(d2) is amended by adding a new subdivision to read:

"(29a) N-phenethyl-4-piperidinone (NPP)."

SECTION 6. G.S. 90-95(d2)(31) reads as rewritten:

"(31) Phenyl-2-propane. ~~Phenyl-2-propanone.~~"

SECTION 7. G.S. 90-95(h) reads as rewritten:

"(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.



- 1 ...
- 2 (3d) Any person who sells, manufactures, delivers, transports, or possesses 28
- 3 grams or more of ~~MDPV~~any substituted cathinone or any mixture containing
- 4 such substance shall be guilty of a felony, which felony shall be known as
- 5 "trafficking in ~~MDPV,"~~substituted cathinones," and if the quantity of such
- 6 substance or mixture involved:
- 7 a. Is 28 grams or more, but less than 200 grams, such person shall be
- 8 punished as a Class F felon and shall be sentenced to a minimum term
- 9 of 70 months and a maximum term of 93 months in the State's prison
- 10 and shall be fined not less than fifty thousand dollars (\$50,000);
- 11 b. Is 200 grams or more, but less than 400 grams, such person shall be
- 12 punished as a Class E felon and shall be sentenced to a minimum term
- 13 of 90 months and a maximum term of 120 months in the State's prison
- 14 and shall be fined not less than one hundred thousand dollars
- 15 (\$100,000);
- 16 c. Is 400 grams or more, such person shall be punished as a Class C felon
- 17 and shall be sentenced to a minimum term of 225 months and a
- 18 maximum term of 282 months in the State's prison and shall be fined
- 19 at least two hundred fifty thousand dollars (\$250,000).
- 20 ~~(3e) Any person who sells, manufactures, delivers, transports, or possesses 28~~
- 21 ~~grams or more of mephedrone or any mixture containing such substance shall~~
- 22 ~~be guilty of a felony, which felony shall be known as "trafficking in~~
- 23 ~~mephedrone," and if the quantity of such substance or mixture involved:~~
- 24 ~~a. Is 28 grams or more, but less than 200 grams, such person shall be~~
- 25 ~~punished as a Class F felon and shall be sentenced to a minimum term~~
- 26 ~~of 70 months and a maximum term of 93 months in the State's prison~~
- 27 ~~and shall be fined not less than fifty thousand dollars (\$50,000);~~
- 28 ~~b. Is 200 grams or more, but less than 400 grams, such person shall be~~
- 29 ~~punished as a Class E felon and shall be sentenced to a minimum term~~
- 30 ~~of 90 months and a maximum term of 120 months in the State's prison~~
- 31 ~~and shall be fined not less than one hundred thousand dollars~~
- 32 ~~(\$100,000);~~
- 33 ~~c. Is 400 grams or more, such person shall be punished as a Class C felon~~
- 34 ~~and shall be sentenced to a minimum term of 225 months and a~~
- 35 ~~maximum term of 282 months in the State's prison and shall be fined~~
- 36 ~~at least two hundred fifty thousand dollars (\$250,000).~~
- 37 (4) Any person who sells, manufactures, delivers, transports, or possesses four
- 38 grams or more of ~~opium or opiate,~~opium, opiate, or opioid, or any salt,
- 39 compound, derivative, or preparation of ~~opium or opiate,~~opium, opiate, or
- 40 opioid (except apomorphine, nalbuphine, analoxone and naltrexone and their
- 41 respective salts), including heroin, or any mixture containing such substance,
- 42 shall be guilty of a felony which felony shall be known as "trafficking in
- 43 ~~opium~~opium, opiate, opioid, or heroin" and if the quantity of such controlled
- 44 substance or mixture involved:
- 45 a. Is four grams or more, but less than 14 grams, such person shall be
- 46 punished as a Class F felon and shall be sentenced to a minimum term
- 47 of 70 months and a maximum term of 93 months in the State's prison
- 48 and shall be fined not less than fifty thousand dollars (\$50,000);
- 49 b. Is 14 grams or more, but less than 28 grams, such person shall be
- 50 punished as a Class E felon and shall be sentenced to a minimum term
- 51 of 90 months and a maximum term of 120 months in the State's prison

1 and shall be fined not less than one hundred thousand dollars
 2 (\$100,000);
 3 c. Is 28 grams or more, such person shall be punished as a Class C felon
 4 and shall be sentenced to a minimum term of 225 months and a
 5 maximum term of 282 months in the State's prison and shall be fined
 6 not less than five hundred thousand dollars (\$500,000).

7 ...
 8 (4b) Any person who sells, manufactures, delivers, transports, or possesses 100 or
 9 more tablets, capsules, or other dosage units, or 28 grams or more of
 10 3,4-methylenedioxyamphetamine (MDA), including its salts, isomers, and
 11 salts of isomers, or 3,4-methylenedioxymethamphetamine (MDMA),
 12 including its salts, isomers, and salts of isomers, or any mixture containing
 13 such substances, shall be guilty of a felony, which felony shall be known as
 14 "trafficking in ~~MDADMA.~~"MDA/MDMA." If the quantity of the substance
 15 or mixture involved:

- 16 a. Is 100 or more tablets, capsules, or other dosage units, but less than
 17 500 tablets, capsules, or other dosage units, or 28 grams or more, but
 18 less than 200 grams, the person shall be punished as a Class G felon
 19 and shall be sentenced to a minimum term of 35 months and a
 20 maximum term of 51 months in the State's prison and shall be fined
 21 not less than twenty-five thousand dollars (\$25,000);
- 22 b. Is 500 or more tablets, capsules, or other dosage units, but less than
 23 1,000 tablets, capsules, or other dosage units, or 200 grams or more,
 24 but less than 400 grams, the person shall be punished as a Class F felon
 25 and shall be sentenced to a minimum term of 70 months and a
 26 maximum term of 93 months in the State's prison and shall be fined
 27 not less than fifty thousand dollars (\$50,000);
- 28 c. Is 1,000 or more tablets, capsules, or other dosage units, or 400 grams
 29 or more, the person shall be punished as a Class D felon and shall be
 30 sentenced to a minimum term of 175 months and a maximum term of
 31 222 months in the State's prison and shall be fined not less than two
 32 hundred fifty thousand dollars (\$250,000).

33"

34 **SECTION 8.** Article 5 of Chapter 90 of the General Statutes is amended by adding
 35 a new section to read:

36 **"§ 90-107.1. Certified diversion investigator access to prescription records.**

37 (a) A certified diversion investigator associated with a qualified law enforcement agency,
 38 as those terms are defined in G.S. 90-113.74(i), shall request and receive from a pharmacy copies
 39 of prescriptions and records related to prescriptions in connection with a bona fide active
 40 investigation related to the enforcement of laws governing licit or illicit drugs by providing in
 41 writing or electronically all of the following:

- 42 (1) The certified diversion investigator's name and certification number.
- 43 (2) The name of the qualified law enforcement agency for whom the investigator
 44 works.
- 45 (3) The case number associated with the request.
- 46 (4) A description of the nature and purpose of the request.
- 47 (5) The first name, last name, and date of birth of each individual whose
 48 prescription and records related to the prescription the investigator seeks,
 49 including, when appropriate, any alternative name, spelling, or date of birth
 50 associated with each such individual.

1 **(b)** When a certified diversion investigator transmits such a request to a pharmacy, the
2 certified diversion investigator shall also transmit a copy of the request to the North Carolina
3 State Bureau of Investigation, Diversion and Environmental Crimes Unit. The North Carolina
4 State Bureau of Investigation shall conduct periodic audits of a random sample of these requests.

5 **(c)** A pharmacy shall provide copies of requested prescriptions and records related to
6 prescriptions as soon as practicable and no later than two business days after receipt of the request
7 from the certified diversion investigator.

8 **(d)** No certified diversion investigator having knowledge by virtue of his office of any
9 such prescription or record related to prescriptions shall divulge such knowledge other than to
10 other law enforcement officials or agencies involved in the bona fide active investigation, except
11 in connection with a prosecution or proceeding in court or before a licensing board or officer to
12 which prosecution or proceeding the person to whom such prescriptions, orders, or records relate
13 is a party, or as provided in G.S. 90-113.74 (i)(4), or as otherwise allowed by law.

14 **(e)** A pharmacy or pharmacist that in good faith complies with this section and provides
15 copies of prescriptions and records related to prescriptions to a certified diversion investigator
16 shall have no liability for improper use of information divulged to the certified diversion
17 investigator."

18 **SECTION 9.** G.S. 90-108 reads as rewritten:

19 **"§ 90-108. Prohibited acts; penalties.**

20 **(a)** It shall be unlawful for any person:

- 21 (1) Other than practitioners licensed under Articles 1, 2, 4, 6, 11, 12A of this
22 Chapter to represent to any registrant or practitioner who manufactures,
23 distributes, or dispenses a controlled substance under the provision of this
24 Article that he or she is a licensed practitioner in order to secure or attempt to
25 secure any controlled substance as defined in this Article or to in any way
26 impersonate a practitioner for the purpose of securing or attempting to secure
27 any drug requiring a prescription from a practitioner as listed above and who
28 is licensed by this ~~State~~;State.
- 29 (2) Who is subject to the requirements of G.S. 90-101 or a practitioner to
30 distribute or dispense a controlled substance in violation of G.S. 90-105 or
31 ~~90-106~~;G.S. 90-106.
- 32 (3) Who is a registrant to manufacture, distribute, or dispense a controlled
33 substance not authorized by his or her registration to another registrant or
34 other authorized ~~person~~;person.
- 35 (4) To omit, remove, alter, or obliterate a symbol required by the Federal
36 Controlled Substances Act or its ~~successor~~;successor.
- 37 (5) To refuse or fail to make, keep, or furnish any record, notification, order form,
38 statement, invoice or information required under this ~~Article~~;Article.
- 39 (6) To refuse any entry into any premises or inspection authorized by this
40 ~~Article~~;Article.
- 41 (7) To knowingly keep or maintain any store, shop, warehouse, dwelling house,
42 building, vehicle, boat, aircraft, or any place whatever, which is resorted to by
43 persons using controlled substances in violation of this Article for the purpose
44 of using such substances, or which is used for the keeping or selling of the
45 same in violation of this ~~Article~~;Article.
- 46 (8) Who is a registrant or a practitioner to distribute a controlled substance
47 included in Schedule I or II of this Article in the course of his or her legitimate
48 business, except pursuant to an order form as required by ~~G.S.~~
49 ~~90-105~~;G.S. 90-105.

- 1 (9) To use in the course of the manufacture or distribution of a controlled
2 substance a registration number which is fictitious, revoked, suspended, or
3 issued to another ~~person~~; person.
- 4 (10) To acquire or obtain possession of a controlled substance by
5 misrepresentation, fraud, forgery, deception, or ~~subterfuge~~; subterfuge.
- 6 (11) To furnish false or fraudulent material information in, or omit any material
7 information from, any application, report, or other document required to be
8 kept or filed under this Article, or any record required to be kept by this
9 ~~Article~~; Article.
- 10 (12) To make, distribute, or possess any punch, die, plate, stone, or other thing
11 designed to print, imprint, or reproduce the trademark, trade name, or other
12 identifying mark, imprint, or device of another or any likeness of any of the
13 foregoing upon any drug or container or labeling thereof so as to render such
14 drug a counterfeit controlled ~~substance~~; substance.
- 15 (13) To obtain controlled substances through the use of legal prescriptions which
16 have been obtained by the knowing and willful misrepresentation to or by the
17 intentional withholding of information from one or more
18 ~~practitioners~~; practitioners.
- 19 (14) Who is a registrant or practitioner or an employee of a registrant or practitioner
20 and who is authorized to possess controlled substances or has access to
21 controlled substances by virtue of ~~his~~—employment, to embezzle or
22 fraudulently or knowingly and willfully misapply or divert to his or her own
23 use or other unauthorized or illegal use or to take, make away with or secrete,
24 with intent to embezzle or fraudulently or knowingly and willfully misapply
25 or divert to his or her own use or other unauthorized or illegal use any
26 controlled substance which shall have come into his or her possession or under
27 his or her care.
- 28 (15) Who is not a registrant or practitioner nor an employee of a registrant or
29 practitioner and who, by virtue of his or her occupation or profession,
30 administers or provides medical care, aid, emergency treatment, or any
31 combination of these to a person who is prescribed a controlled substance, to
32 embezzle or fraudulently or knowingly and willfully misapply or divert to his
33 or her own use or other unauthorized or illegal use or to take, make away with,
34 or secrete, with intent to embezzle or fraudulently or knowingly and willfully
35 misapply or divert to his or her own use or other unauthorized or illegal use
36 any controlled substance that is prescribed to another.
- 37 (b) Any person who violates this section shall be guilty of a Class 1 misdemeanor.
38 Provided, that if the criminal pleading alleges that the violation was committed intentionally, and
39 upon trial it is specifically found that the violation was committed intentionally, such violations
40 shall be a Class I felony unless one of the following applies:
- 41 (1) A person who violates subdivision (7) of subsection (a) of this section and
42 also fortifies the structure, with the intent to impede law enforcement entry,
43 (by barricading windows and doors) shall be punished as a Class I felon.
- 44 (2) A person who violates subdivision (14) or (15) of subsection (a) of this section
45 shall be punished as a Class G felon.
- 46 (3) A person who violates subdivision (14) or (15) of subsection (a) of this section
47 and intentionally diverts any controlled substance by means of dilution or
48 substitution or both shall be punished as a Class E felon. As used in this
49 subdivision, the following terms have the following meanings:
- 50 a. Dilution. – The act of diluting or the state of being diluted; the act of
51 reducing the concentration of a mixture or solution.

b. Substitution. – To take the place of or replace."

**PART III. AMENDMENTS PERTAINING TO THE NORTH CAROLINA
CONTROLLED SUBSTANCES REPORTING SYSTEM ACT**

SECTION 10. G.S. 90-113.73(b) reads as rewritten:

"(b) The Commission shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

- (1) The dispenser's DEA number.
- (2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:
 - a. Full address, including city, state, and zip ~~code~~code.
 - b. Telephone ~~number, and~~number.
 - c. Date of birth.
- (3) The date the prescription was written.
- (4) The date the prescription was filled.
- (5) The prescription number.
- (6) Whether the prescription is new or a refill.
- (7) Metric quantity of the dispensed drug.
- (8) Estimated days of supply of dispensed drug, if provided to the dispenser.
- (9) National Drug Code of dispensed drug.
- (10) Prescriber's DEA number.
- (10a) Prescriber's national provider identification number, for any prescriber that has a national provider identification number. A pharmacy shall not be subject to a civil penalty under subsection (e) of this section for failure to report the prescriber's national provider identification number when it is not received by the pharmacy.
- (11) Method of payment for the prescription."

SECTION 11.(a) G.S. 90-113.74 reads as rewritten:

"§ 90-113.74. Confidentiality.

...

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

- (1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients. A person authorized to receive data pursuant to this paragraph may delegate the authority to receive the data to other persons working under his or her direction and supervision, provided the Department approves this delegation.

The administrator of a hospital emergency department or hospital acute care facility shall provide the Department with a list of prescribers who are authorized to prescribe controlled substances for the purpose of providing medical care for patients of the hospital emergency department or hospital acute care facility and a list of delegates who are authorized to receive data on behalf of the providers listed. The administrator acting under this paragraph shall submit the lists to the Department no later than December 1 of the calendar year preceding the year during which the delegates are to receive data and may provide updated lists at any time during the course of the year. Within one week of receiving the initial or updated lists described in this paragraph, the Department shall establish all of the delegate accounts necessary to enable each delegate listed by the administrator of the hospital emergency department or hospital acute care facility to receive data on behalf of the listed prescribers.

- 1 Delegations made pursuant to this paragraph are valid during the calendar year
2 for which submitted by the administrator.
- 3 (2) An individual who requests the individual's own controlled substances
4 reporting system information.
- 5 (3) Special agents of the North Carolina State Bureau of Investigation who are
6 assigned to the Diversion & Environmental Crimes Unit and whose primary
7 duties involve the investigation of diversion and illegal use of prescription
8 medication. SBI agents assigned to the Diversion & Environmental Crimes
9 Unit may then provide this information to other SBI agents who are engaged
10 in a bona fide specific investigation related to enforcement of laws governing
11 licit drugs. ~~The SBI shall notify the Office of the Attorney General of North~~
12 ~~Carolina of each request for inspection of records maintained by the~~
13 ~~Department. The Attorney General of North Carolina, or a designee who is a~~
14 ~~full-time employee in the North Carolina Department of Justice, shall have~~
15 access to the system to monitor requests for inspection of records.
- 16 (4) Primary monitoring authorities for other states pursuant to a specific ongoing
17 investigation involving a designated person, if information concerns the
18 dispensing of a Schedule II through V controlled substance to an ultimate user
19 who resides in the other state or the dispensing of a Schedule II through V
20 controlled substance prescribed by a licensed health care practitioner whose
21 principal place of business is located in the other state.
- 22 (5) To a sheriff or designated deputy sheriff or a police chief or a designated
23 police investigator who is assigned to investigate the diversion and illegal use
24 of prescription medication or pharmaceutical products identified in Article 5
25 of this Chapter of the General Statutes as Schedule II through V controlled
26 substances and who is engaged in a bona fide specific investigation related to
27 the enforcement of laws governing licit drugs pursuant to a lawful court order
28 specifically issued for that purpose.
- 29 (6) The Division of Medical Assistance for purposes of administering the State
30 Medical Assistance Plan.
- 31 (7) Licensing boards with jurisdiction over health care disciplines pursuant to an
32 ongoing investigation by the licensing board of a specific individual licensed
33 by the board.
- 34 (8) Any county medical examiner appointed by the Chief Medical Examiner
35 pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose
36 of investigating the death of an individual.
- 37 (9) The federal Drug Enforcement Administration's Office of Diversion
38 ~~Control~~. Control or Tactical Diversion Squad in North Carolina.
- 39 (10) The North Carolina Health Information Exchange Authority (NC HIE
40 Authority), established under Article 29B of this Chapter, through
41 Web-service calls.
- 42 ...
- 43 (k) In addition to the civil penalties provided in G.S. 90-113.75(a) and any other
44 applicable civil or criminal penalties, the following criminal penalties apply to any individual
45 authorized to access data in the controlled substances reporting system when that access is
46 authorized by subdivisions (3) through (10) of subsection (c) of this section:
- 47 (1) An individual who knowingly and intentionally accesses prescription
48 information in the controlled substances reporting system for a purpose not
49 authorized by this section shall be guilty of a Class I felony.

1 (2) An individual who knowingly and intentionally discloses or disseminates
2 prescription information from the system for a purpose not authorized by this
3 section shall be guilty of a Class I felony.

4 (3) An individual who willfully and maliciously obtains, discloses, or
5 disseminates prescription information for a purpose not authorized by this
6 section and with the intent to use such information for commercial advantage
7 or personal gain, or to maliciously harm any person, shall be guilty of a Class
8 H felony.

9 Any person who is convicted of a criminal offense under this subsection is permanently
10 barred from accessing the controlled substances reporting system.

11 (L) The State Bureau of Investigation, Diversion & Environmental Crimes Unit, may
12 investigate suspected violations of this section and shall notify the Department of any charges or
13 convictions pursuant to this section."

14 **SECTION 11.(b)** G.S. 90-113.74 reads as rewritten:

15 "**§ 90-113.74. Confidentiality.**

16 ...

17 (c) The Department shall release data in the controlled substances reporting system to the
18 following persons only:

19 ...

20 ~~(5) To a sheriff or designated deputy sheriff or a police chief or a designated~~
21 ~~police investigator who is assigned to investigate the diversion and illegal use~~
22 ~~of prescription medication or pharmaceutical products identified in Article 5~~
23 ~~of this Chapter of the General Statutes as Schedule II through V controlled~~
24 ~~substances and who is engaged in a bona fide specific investigation related to~~
25 ~~the enforcement of laws governing licit drugs pursuant to a lawful court order~~
26 ~~specifically issued for that purpose.~~

27 (5a) Local law enforcement officers pursuant to subsection (i) of this section.

28 ...

29 (i) Data released by the Department from the controlled substances reporting system to
30 local law enforcement officers is subject to all of the following conditions and requirements:

31 (1) The Department shall release data in the controlled substances reporting
32 system to a local law enforcement officer only if all of the following
33 conditions are satisfied:

34 a. The local law enforcement officer is a certified diversion investigator.

35 b. The agency that supervises the investigator is a qualified law
36 enforcement agency.

37 c. The request is reasonably related to a bona fide active investigation
38 involving a specific violation of any State or federal law involving a
39 monitored prescription drug.

40 d. The request has been reviewed and approved by the State Bureau of
41 Investigation, Diversion & Environmental Crimes Unit.

42 (2) In the event a special agent of the State Bureau of Investigation, Diversion &
43 Environmental Crimes Unit, takes action upon a request by a certified
44 diversion investigator for access to data in the controlled substances reporting
45 system, the special agent shall not incur criminal or civil liability for such
46 action or for actions taken by the certified diversion investigator making the
47 request.

48 (3) The conditions outlined in this subsection shall create an audit trail that may
49 be used to investigate or prosecute violations of this section. The Department
50 shall grant access to the system to the Attorney General of North Carolina or
51 a designee and Special Agents of the State Bureau of Investigation who are

1 assigned to the Diversion & Environmental Crimes Unit for the purpose of
2 reviewing the audit trail. The State Bureau of Investigation shall conduct
3 periodic audits of a random sample of requests from certified diversion
4 investigators for access to data in the controlled substances reporting system.

5 (4) Data obtained by certified diversion investigators from the controlled
6 substances reporting system in the manner prescribed by this subsection may
7 be shared with other law enforcement personnel or prosecutorial officials (i)
8 only upon the direction of the certified diversion investigator who originally
9 requested the information and (ii) in the case of law enforcement personnel
10 from other law enforcement agencies, only with law enforcement personnel
11 who are directly participating in an official joint investigation or as provided
12 in subdivision (5) of this subsection.

13 (5) In the event the data provided to the local law enforcement officer indicates
14 transactions solely outside of that local law enforcement officer's jurisdiction,
15 the matter shall be referred to the State Bureau of Investigation, Diversion &
16 Environmental Crimes Unit, or to a certified diversion investigator employed
17 by a qualified law enforcement agency with jurisdiction over the transactions
18 at issue.

19 (6) Certified diversion investigators may not request or receive prescription data
20 from other states through PMP Interconnect or any other mechanism
21 established by the Department to facilitate interstate connectivity of the
22 controlled substances reporting system.

23 (7) As used in this subsection, the following terms have the following meanings:

24 a. Certified diversion investigator. – An officer affiliated with a qualified
25 law enforcement agency who is certified as a diversion investigator by
26 either the North Carolina Sheriffs' Education and Training Standards
27 Commission or the North Carolina Criminal Justice Education and
28 Training Standards Commission. If for any reason a certified diversion
29 investigator leaves a position involving diversion investigation, the
30 qualified law enforcement agency shall notify the North Carolina
31 Department of Health and Human Services Controlled Substance
32 Reporting System and the State Bureau of Investigation, Diversion &
33 Environmental Crimes Unit, within 72 hours after the effective date of
34 the change.

35 b. Certified diversion supervisor. – The head of a municipal police
36 department, a county police department, a sheriff's office, or the
37 designee of the agency head with supervisory authority over that
38 agency's diversion investigators who is certified as a diversion
39 supervisor by either the North Carolina Sheriffs' Education and
40 Training Standards Commission or the North Carolina Criminal
41 Justice Education and Training Standards Commission.

42 c. Qualified law enforcement agency. – Any of the following entities
43 whose head is a certified diversion investigator or that employs at least
44 one certified diversion investigator and at least one certified diversion
45 supervisor:

46 1. A municipal police department.

47 2. A county police department.

48 3. A sheriff's office.

49 d. Active investigation. – An investigation that is being conducted of one
50 or more specific persons and for which probable cause exists for the

1 release of the information, including a reasonable likelihood that it
2 could lead to the filing of criminal proceedings.

3 (j) The Department shall do all of the following:

4 (1) Enable each certified diversion investigator associated with a qualified law
5 enforcement agency to register with the controlled substances reporting
6 system by providing, at a minimum, all of the following information:

7 a. The investigator's name and certification number.

8 b. The name of the qualified law enforcement agency for whom the
9 investigator works.

10 c. The name and certification number of each certified diversion
11 supervisor with whom the investigator works.

12 (2) Enable each certified diversion investigator associated with a qualified law
13 enforcement agency to request and receive data in connection with a bona fide
14 active investigation involving a specific violation of any state or federal law
15 involving a monitored prescription by providing, at a minimum, all of the
16 following:

17 a. The case number associated with the request.

18 b. A description of the nature and purpose of the request.

19 c. The first name, last name, and date of birth of each individual whose
20 prescription data the investigator seeks, including, when appropriate,
21 any alternative name, spelling, or date of birth associated with each
22 such individual.

23 d. An acknowledgement that the certified diversion investigator is aware
24 of the penalties associated with improperly obtaining, disclosing, or
25 disseminating data from the controlled substances reporting system.

26 (3) Enable the State Bureau of Investigation, Diversion & Environmental Crimes
27 Unit, to review each request for data from a certified diversion investigator
28 associated with a qualified law enforcement agency and, upon such review, to
29 determine if the request is approved, denied, or delayed pending further
30 review or investigation.

31 (4) Create an audit trail that may be used to investigate or prosecute violations of
32 this Part and ensure that the Attorney General of North Carolina or a designee
33 and Special Agents of the North Carolina State Bureau of Investigation who
34 are assigned to the Diversion & Environmental Crimes Unit have access to
35 the system to review the audit trail."

36 **SECTION 11.(c)** The Department of Health and Human Services shall begin
37 developing the capabilities necessary to implement Section 11(b) of this act.

38 **SECTION 12.** G.S. 90-113.75 reads as rewritten:

39 **"§ 90-113.75. Civil penalties; other remedies; immunity from liability.**

40 (a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts
41 to obtain information from the system in violation of a provision of this Article or a rule adopted
42 pursuant to this Article shall be assessed a civil penalty by the Department not to exceed ten
43 thousand dollars (\$10,000) per ~~violation~~-violation and shall be temporarily barred from accessing
44 the system until further findings by the Department. The clear proceeds of penalties assessed
45 under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with
46 Article 31A of Chapter 115C of the General Statutes. The Commission shall adopt rules
47 establishing the factors to be considered in determining the amount of the penalty to be assessed."

48 (b) In addition to any other remedies available at law, an individual whose prescription
49 information has been disclosed in violation of this Article or a rule adopted pursuant to this
50 Article may bring an action against any person or entity who has intentionally, knowingly, or

1 negligently released confidential information or records concerning the individual for either or
2 both of the following:

3 (1) Nominal damages of one thousand dollars (\$1,000). In order to recover
4 damages under this subdivision, it shall not be necessary that the plaintiff
5 suffered or was threatened with actual damages.

6 (2) The amount of actual damages, if any, sustained by the individual.

7 (c) ~~Notwithstanding the foregoing, G.S. 8-53, G.S. 75-65, or any other provision of~~
8 ~~international, federal, State, or local law, a practitioner as defined in G.S. 90-87, a dispenser, or~~
9 ~~other person or entity permitted access to data or required or permitted to submit or transmit~~
10 ~~reports or other records, data, or information, including, without limitation, any protected health~~
11 ~~information or any other individually identifying or personal information, under this Article that,~~
12 ~~in good faith, makes a report or transmits data-submits or transmits such reports or other records,~~
13 ~~data, or information as required or allowed by this Article is immune from civil or criminal~~
14 ~~liability that might otherwise be incurred or imposed as a result of making the report or~~
15 ~~transmitting the data-submitting or transmitting such reports or other records, data, or~~
16 ~~information, or as a result of any subsequent actual or attempted access to or use or disclosure of~~
17 ~~such reports or other records, data, or information, whether by the Department, any law~~
18 ~~enforcement officer or agency, or any other person or entity."~~

19 **SECTION 13.** Article 5E of Chapter 90 of the General Statutes is amended by adding
20 a new section to read:

21 "**§ 90-113.74E. Certification of diversion investigators and diversion supervisors.**

22 Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina Criminal
23 Justice Education and Training Standards Commission and the North Carolina Sheriffs'
24 Education and Training Standards Commission, in consultation with the Department of Justice,
25 North Carolina Justice Academy, and State Bureau of Investigation, shall ensure that educational
26 materials are created and that training programs are conducted for the certification of diversion
27 investigators and diversion supervisors, as defined in G.S. 90-113.74(i)."

28 **SECTION 14.(a)** G.S. 17C-6(a) is amended by adding two new subdivisions to read:

29 "(18) Establish minimum standards and levels of training for certification of
30 diversion investigators and diversion supervisors, as defined in
31 G.S. 90-113.74(i). As part of these minimum standards, the Commission shall
32 require that certified diversion investigators receive training in the following:

33 a. Definition of drug diversion.

34 b. Categories of drugs most subject to diversion and misuse.

35 c. Methods used to divert drugs.

36 d. Proper investigation of drug diversion cases.

37 e. Appropriate use of the controlled substances reporting system to
38 investigate drug diversion cases.

39 f. Requests of prescriptions and records related to prescriptions pursuant
40 to G.S. 90-107.1, including best practices for working with
41 pharmacies in a manner that minimizes disruption of customer service
42 and pharmacy operations.

43 g. Data privacy and security provisions of the Health Insurance
44 Portability and Accountability Act of 1996 (HIPAA) and other
45 pertinent federal and State laws governing privacy and security of
46 confidential data and records.

47 h. Proper handling of confidential data and records from any source.

48 i. Criminal and civil penalties under federal and State law for improperly
49 accessing, handling, or disclosing confidential prescription data or
50 other confidential data or records.

1 (19) Certify and recertify at least once every three years, suspend, revoke, or deny,
2 pursuant to the standards that it has established for the purpose, persons as
3 qualified to be employed at entry level and retained as diversion investigators
4 and diversion supervisors, as defined in G.S. 90-113.74(i)."

5 **SECTION 14.(b)** G.S. 17E-4(a) is amended by adding two new subdivisions to read:

6 "(14) Establish minimum standards and levels of training for certification of
7 diversion investigators and diversion supervisors, as defined in
8 G.S. 90-113.74(i). As part of these minimum standards, the Commission shall
9 require that certified diversion investigators receive training in the following:

10 a. Definition of drug diversion.

11 b. Categories of drugs most subject to diversion and misuse.

12 c. Methods used to divert drugs.

13 d. Proper investigation of drug diversion cases.

14 e. Appropriate use of the controlled substances reporting system to
15 investigate drug diversion cases.

16 f. Requests of prescriptions and records related to prescriptions pursuant
17 to G.S. 90-107.1, including best practices for working with
18 pharmacies in a manner that minimizes disruption of customer service
19 and pharmacy operations.

20 g. Data privacy and security provisions of the Health Insurance
21 Portability and Accountability Act of 1996 (HIPAA) and other
22 pertinent federal and State laws governing privacy and security of
23 confidential data and records.

24 h. Proper handling of confidential data and records from any source.

25 i. Criminal and civil penalties under federal and State law for improperly
26 accessing, handling, or disclosing confidential prescription data or
27 other confidential data or records.

28 (15) Certify and recertify at least once every three years, suspend, revoke, or deny,
29 pursuant to the standards that it has established for the purpose, persons as
30 qualified to be employed at entry level and retained as diversion investigators
31 and diversion supervisors, as defined in G.S. 90-113.74(i)."

32 33 **PART IV. APPROPRIATIONS**

34 **SECTION 15.(a)** It is the intent of the General Assembly to appropriate from the
35 General Fund to the Department of Health and Human Services, Division of Mental Health,
36 Developmental Disabilities, and Substance Abuse Services, the sum of ten million dollars
37 (\$10,000,000) in recurring funds for the 2019-2020 fiscal year. These funds shall not be used for
38 any purpose other than to increase the availability of community-based treatment and recovery
39 services for substance use disorders, including medication-assisted treatment. These funds shall
40 not supplant existing funds for community-based treatment and recovery services for substance
41 abuse disorders.

42 **SECTION 15.(b)** It is the intent of the General Assembly to appropriate from the
43 General Fund to the Department of Health and Human Services, Division of Mental Health,
44 Developmental Disabilities, and Substance Abuse Services, the sum of one million dollars
45 (\$1,000,000) in recurring funds for the 2019-2020 fiscal year to purchase opioid antagonists, as
46 defined in G.S. 90-12.7, which shall be distributed at no charge to North Carolina law
47 enforcement agencies for the reversal of opioid-related drug overdoses.

48 **SECTION 15.(c)** It is the intent of the General Assembly to appropriate from the
49 General Fund to the State Bureau of Investigation the sum of one hundred sixty thousand dollars
50 (\$160,000) in recurring funds for the 2019-2020 fiscal year to fund Operation Medicine Drop.

1 **SECTION 15.(d)** It is the intent of the General Assembly to appropriate from the
2 General Fund to the State Bureau of Investigation the sum of one hundred twenty-two thousand
3 dollars (\$122,000) in recurring funds and the sum of fifty-eight thousand dollars (\$58,000) in
4 nonrecurring funds for the 2019-2020 fiscal year. The State Bureau of Investigation shall use
5 these funds to create one full-time equivalent special agent position within the State Bureau of
6 Investigation to enhance drug investigations throughout the State. These funds shall not be used
7 to supplant any other source of funding for this position.

8 **SECTION 15.(e)** G.S. 143C-5-2 does not apply to this act.
9

10 **PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

11 **SECTION 16.** If any provision of this act or its application is held invalid, the
12 invalidity does not affect other provisions or applications of this act that can be given effect
13 without the invalid provisions or application, and to this end the provisions of this act are
14 severable.

15 **SECTION 17.** Sections 8 and 11(b) of this act become effective July 1, 2019. Section
16 10 becomes effective September 1, 2018. Section 9 of this act, and the criminal offenses created
17 in G.S. 90-113.74.(k) by Section 11(a) of this act, become effective December 1, 2018. The
18 remainder of this act becomes effective July 1, 2018.